STATE OF MICHIGAN

COURT OF APPEALS

ARDYTHE J. WILLIAMS,

Plaintiff-Appellant,

v

MEREDITH LOU THARP,

Defendant-Appellee.

UNPUBLISHED
January 15, 2009

No. 280938
Benzie Circuit Court
LC No. 06-007813-CH

Before: Murray, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition in favor of defendant on plaintiff's "quiet title"[1] action. We conclude that the trial court reached the right outcome and we affirm.

At issue in this case is a determination of the parties' rights to the property at 20514 Fewins Road, Interlochen, Michigan, 49643 (the Fewins Property), record title to which is held in the name of plaintiff and defendant, who are mother and daughter, as joint tenants with full rights of survivorship. In November 2000, plaintiff was the sole owner of property located at 5234 Goodrick[2] Road, Traverse City, Michigan, 49684 (the Goodrick Property). On November 16, 2000, plaintiff conveyed the Goodrick Property by quitclaim deed to herself and defendant as "joint tenants with full rights of survivorship" for "the sum of ONE AND NO/100 ($1.00) DOLLARS and no other valuable consideration" (the Quit Claim Deed), which defendant paid by placing "four quarters on the table."

Sometime later, plaintiff decided to sell the Goodrick Property and use the proceeds to purchase the Fewins Property. Because the closing on the Fewins Property occurred prior to the closing on the Goodrick Property, plaintiff acquired a bridge loan to pay for the Fewins Property

[1] Plaintiff's claim is not asserted as an action to quiet title, but that is essentially the nature of the action, as plaintiff seeks to have the trial court declare that she alone has rights to the property.

[2] Although the deed refers to both "Goodrich" and "Goodrick" Road, there appears to be no "Goodrich" Road in Traverse City. Thus, we conclude that the correct street name is "Goodrick."

until the Goodrick Property closing occurred. Title to the Fewins Property was transferred to plaintiff and defendant as joint tenants with full rights of survivorship from a third-party by a warranty deed dated May 30, 2001 (the Warranty Deed).

Plaintiff filed suit in October 2006, alleging that the Warranty Deed was simply an estate planning device, not a present intent to convey a gift, and that plaintiff had mistakenly believed that she was bequeathing the premises to defendant upon her death such that the apparent title created in defendant could be changed at will. She also argued that defendant had paid insufficient consideration of a single dollar and requested defendant be removed from the title and that any interest defendant had be declared "only naked legal title" held for plaintiff's benefit.

Both parties moved for summary disposition. Plaintiff argued that the Warranty Deed for the Fewins Property was intended to be a testamentary instrument as evidenced by the fact that the property was completely under the control and possession of plaintiff, that defendant never gave any consideration for the loan to purchase the property, never paid on the loan, was never personally liable on the bridge loan, never paid taxes or performed upkeep on the property, and never attempted to live there. Plaintiff also maintained that one dollar was clearly insufficient consideration and that love and affection were clearly excluded under the terms of the deed. Counsel did not designate which deed, but we assume it was a reference to the Quit Claim Deed, as the Warranty Deed contains no such language.

Defendant argued that she had given plaintiff exactly the consideration proclaimed in the Quit Claim Deed and that such consideration was often used in family transfers. Defendant also asserted that the consideration proved that the property interest was not intended as a bequeathment, as beneficiaries do not pay for a bequeathment. Finally, defendant argued plaintiff's sophisticated knowledge and use of estate planning devices rebutted any contention that plaintiff was somehow unaware that using a deed as opposed to a will would result in defendant receiving a present interest.

Concluding that there were no material facts in dispute, the trial court held that the deed was not testamentary because there was no writing accompanying the deed, or any portion of the deed, which indicated the land would continue to be plaintiff's property during her lifetime with the remainder to defendant at plaintiff's death. Given that there was "a deed that passes an interest in property, not by accident, not by deceit, or subterfuge, but by design" that "shows up again" in the Warranty Deed,[3] with no discussion between the parties that this was simply as a testamentary instrument, the trial court concluded that "when all is said and done, this seems to me to be a transaction wherein for reasons unbeknownst to the Court, perhaps being in a relationship, or lack of it, or deteriorating relationship of the parties, the mother has simply changed her mind," and granted defendant's motion for summary disposition.

[3] The trial court seems to refer to this property as the "Honor property." We assume this is because the bridge loan used to acquire the property was taken out with Honor State Bank located in Honor, Michigan.

We review de novo a trial court's decision on summary disposition. *Kisiel v Holz*, 272 Mich App 168, 170; 725 NW2d 67 (2006). Summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. A trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the opposing party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence does not create a genuine issue of any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Maiden, supra* at 120.

The heart of this case is whether plaintiff's execution and recording of the Quit Claim Deed constituted a valid conveyance, thereby creating defendant's property interest as a joint tenant. Plaintiff's affidavit states that she added defendant's name as an estate-planning device and did not intend to pass a present interest. Because plaintiff's argument involves a question of intent, the issue is really one of delivery: "The purpose of the delivery requirement is to show the grantor's intent to convey the property described in the deed." *Energetics, Ltd v Whitmill*, 442 Mich 38, 53; 497 NW2d 497 (1993). See also *Resh v Fox*, 365 Mich 288, 291; 112 NW2d 486 (1961).

Viewed in this context, we conclude that plaintiff simply has no claim. Plaintiff's argument that defendant has no interest in the Fewins Property relies on plaintiff's alleged intent in executing the Quit Claim Deed. The Quit Claim Deed passed title to the Goodrick Property, not the Fewins Property. It is the Warranty Deed that passed title to the Fewins Property, and plaintiff is not the grantor in the Warranty Deed. This simple fact precludes plaintiff from receiving any relief, as a document in which plaintiff is not the grantor cannot constitute her testamentary device. Plaintiff and defendant received their interests in the Fewins Property simultaneously by means of the Warranty Deed from the third-party grantor. For these reasons, we agree with the trial court that *Bigley v Souvey*, 45 Mich 370; 8 NW 98 (1881) is inapposite, as that case involved the intent of the *grantor*.

Plaintiff does not expressly claim, but appears to imply, that defendant is a joint tenant of the Fewins Property only because she was a joint tenant of the Goodrick Property. Plaintiff provided no evidence in this regard, however. The record is devoid of any explanation for defendant's presence on the Warranty Deed, the entire argument being based on plaintiff's intent in executing the Quit Claim Deed and whether the consideration provided therein was sufficient. Plaintiff failed to either allege or provide any evidence of some agreement between the parties that whatever testamentary intent she alleged existed in the Quit Claim Deed was somehow transferred to the Warranty Deed. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims." *Peterson Novelties v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Having failed to cite any evidence to support her argument, plaintiff has abandoned it. *Id.*

We note that even if we were to consider some type of transfer theory, plaintiff's claim still must fail. Plaintiff argues defendant has no interest in the Fewins Property because it is based on inadequate consideration paid for defendant's interest in the Goodrick Property. However, absent elements of bad faith, mere inadequacy of consideration does not warrant the setting aside of a deed. See *Olson v Rasmussen*, 304 Mich 639, 644; 8 NW2d 668 (1943). Also, to the extent the transfer of the property in the Quit Claim Deed was a gift, no consideration was necessary for the deed to be valid. *Kar v Hogan*, 399 Mich 529, 545; 251 NW2d 77 (1976); *Daane v Lovell*, 83 Mich App 282, 293; 268 NW2d 377 (1978).

We find that the trial court properly granted summary disposition to defendant. To the extent that the trial court's grant of summary disposition was based on a different reason, we uphold the decision because the trial court reached the right result. *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Affirmed.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Alton T. Davis